

## Agency 105

# State Board of Indigents' Defense Services

### *Articles*

- 105-1. GENERAL.
- 105-2. TERMS DEFINED.
- 105-3. APPOINTED ATTORNEYS.
- 105-4. ENTITLEMENT TO LEGAL REPRESENTATION.
- 105-5. ATTORNEY COMPENSATION.
- 105-6. REIMBURSEMENT OF EXPENSES.
- 105-7. INVESTIGATIVE, EXPERT OR OTHER SERVICES.
- 105-8. COURT REPORTERS; TRANSCRIPTS.
- 105-9. CLAIMS GENERALLY.
- 105-10. SYSTEMS FOR PROVIDING LEGAL DEFENSE SERVICES FOR INDIGENT PERSONS.
- 105-11. REIMBURSEMENT FROM DEFENDANT.
- 105-12 TO 105-20. RESERVED.
- 105-21. PUBLIC DEFENDER GUIDELINES.
- 105-22 TO 105-30. RESERVED.
- 105-31. CONTRACT COUNSEL GUIDELINES.

### **Article 1.—GENERAL**

#### **105-1-1. Legal representation provided.**

(a) Legal representation, at state expense, shall be provided to all persons who are financially unable to obtain adequate representation without substantial hardship to themselves or their families in the following cases:

- (1) felony cases at the trial court level;
- (2) habeas corpus cases arising out of an extradition proceeding pursuant to K.S.A. 22-2710;
- (3) habeas corpus cases arising from a mental commitment pursuant to K.S.A. 1997 Supp. 22-3428;
- (4) probation revocation hearings in felony cases;
- (5) habeas corpus cases as authorized by K.S.A. 1997 Supp. 22-4503 and K.S.A. 1997 Supp. 22-4506;
- (6) motions attacking sentence pursuant to K.S.A. 60-1507;
- (7) motions to modify sentence pursuant to K.S.A. 21-4603;
- (8) appeals from felony convictions or habeas corpus findings, as authorized by K.S.A. 1997 Supp. 22-4503 and K.S.A. 1997 Supp. 22-4506, to the appellate courts of Kansas;
- (9) appeals from an order of the court waiving

jurisdiction of a juvenile offender to the criminal courts;

(10) habeas corpus cases arising out of an involuntary commitment pursuant to K.S.A. 1997 Supp. 59-2965;

(11) grand jury witnesses called to testify pursuant to K.S.A. 22-3009;

(12) material witnesses committed to custody as authorized by K.S.A. 1997 Supp. 22-2805; and

(13) any other cases in which legal representation at state expense is required by law.

(b) Legal representation at state expense shall not be provided in the following types of cases:

(1) services on behalf of juvenile offenders, unless the juvenile is charged with commission of a felony offense as an adult under the criminal laws of Kansas;

(2) services on behalf of a defendant charged with a misdemeanor or a defendant appealing a misdemeanor conviction;

(3) any case in which the defendant or other person represented has not been determined to be indigent or partially indigent by a judge, using guidelines developed by the board of indigents' defense services; and

(4) any case in which an attorney has not been appointed by a judge to represent the defendant.

(c) Legal representation shall continue until final resolution of the cause for which appointed. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 1997 Supp. 22-2805, K.S.A. 22-3009, 22-3716, K.S.A. 1997 Supp. 22-4503, K.S.A. 1997 Supp. 22-4505, K.S.A. 1997 Supp. 22-4506, K.S.A. 1997 Supp. 22-4522 and K.S.A. 1997 Supp. 38-1681; effective May 1, 1984; amended Aug. 20, 1999.)

## Article 2.—TERMS DEFINED

**105-2-1. Definitions.** Unless the context otherwise requires, terms used in K.A.R. 105-1-1 et seq., forms, and instructions shall have the following meanings.

(a) “Board” means the state board of indigents’ defense services.

(b) “Director” means the state director of indigents’ defense services appointed by the board.

(c) “District” means judicial district.

(d) “Legal representation” means representation of indigent defendants by a qualified and effective attorney, as well as transcript preparation and other related defense services by investigators, expert witnesses, and others when requested by the attorney and properly approved in accordance with K.A.R. 105-7-1, 105-7-2, and 105-7-3.

(e) “Panel” means the list of qualified attorneys in a county or judicial district who are eligible for appointment or assignment to represent indigent defendants and who voluntarily request to be considered for appointment or assignment.

(f) “Public defender” means an attorney selected and employed on a full-time basis by the board to provide quality legal representation to indigent defendants.

(g) “State appellate defender” means an attorney selected and employed on a full-time basis by the board to provide appellate representation to indigent defendants in the appellate courts of Kansas.

(h) “Trial counsel” means an attorney or public defender appointed or assigned under the terms of these regulations to provide legal representation to indigent defendants in the district courts of Kansas and as provided by K.A.R. 105-3-9.

(i) “Conflicts attorney office” means the office designated by the board to provide indigent felony and related defense services for cases that cannot be handled by a public defender office due to potential conflicts of interest.

(j) “Contract counsel or attorney” means an at-

torney who has entered into a contract with the board to provide representation to indigent defendants in the district and appellate courts of Kansas.

(k) “Assigned counsel or attorney” means a panel attorney appointed by the court to represent an indigent defendant in a case in which a public defender, contract counsel, or designated conflicts office has a conflict of interest and the public defender, the designated conflicts office, or contract counsel is not able to undertake representation. (Authorized by and implementing K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Oct. 31, 1988; amended March 28, 1994; amended Aug. 20, 1999.)

## Article 3.—APPOINTED ATTORNEYS

**105-3-1. Panel of attorneys.** (a) The administrative judge of each district shall compile a list of volunteer attorneys eligible for assignment to represent indigent defendants for each county in the district. The list shall be known as the panel for indigent defense services.

(b) The administrative judge shall revise the panel annually, as incoming attorneys register with the clerk of the district court and when removal or withdrawal of attorneys from the panel or any other cause makes revision appropriate.

(c) Each attorney on the voluntary panel shall accept felony appointments for a minimum period of one year, with renewable one-year service terms thereafter. The administrative judge may waive this requirement for good cause shown.

(d) In compiling the list, the administrative judge shall consider the criteria contained in K.A.R. 105-3-2, the training, the resources and the experience of each attorney. The judge may consider any other relevant factor or factors relating to the attorney’s ability to provide effective assistance of counsel to indigent defendants.

(e) An administrative judge may refuse to place an attorney on a panel. Should the administrative judge refuse to place an attorney on a panel, that judge shall promptly notify the attorney and the board of this decision. The decision shall become effective upon notice to the attorney and shall remain effective until the board or administrative judge places the attorney on the panel.

(f) An attorney who is refused placement on a panel may inform the board that the attorney wishes to appear and offer evidence for placement

on the panel at a hearing before the board. Any such evidence shall be reviewed by the board for determination of whether or not the administrative judge abused that individual's discretion in refusing to place the attorney on the panel. The hearing shall be conducted as a summary proceeding. (Authorized by and implementing K.S.A. 22-4501 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Oct. 31, 1988; amended Aug. 20, 1999.)

**105-3-2. Eligibility to serve.** (a) Each licensed attorney engaged in private practice of law shall be eligible to serve on the panel if the following criteria are met.

(1) Each attorney on the voluntary panel representing an indigent defendant shall have completed 12 hours of continuing legal education in the area of criminal law within three years of appointment or have graduated from an accredited law school during the three years immediately before appointment.

(2) Each attorney assigned to the defense of any felony classified as a non-drug grid offense with a severity level of 3 or 4, or any felony classified as a drug grid offense with a severity level of 1, 2, or 3 shall have tried to a verdict, either as defense counsel or prosecutor, five or more felony jury trials.

(3) Each attorney assigned to the defense of any felony classified as an off-grid offense or a non-drug grid offense with a severity level of 1 or 2 shall have tried to verdict, either as defense counsel or prosecutor, five or more jury trials involving the following:

(A) non-drug offenses of severity levels 1 through 4 or drug grid offenses of severity levels 1 through 3; or

(B) any off-grid offenses.

(4) Each attorney assigned or appointed to the defense of any indigent person accused of a capital felony shall be a prequalified death penalty attorney. Each attorney shall be screened by the board to determine the attorney's qualifications to serve as defense counsel to an indigent person accused of a capital felony, pursuant to these regulations and "guideline 5.1(I), attorney eligibility," as published in the 1989 version of the American bar association (ABA) "guidelines for the appointment and performance of counsel in death penalty cases." Each attorney who is eligible to serve on

the capital appointments panel shall be certified by the board.

(5) Each attorney assigned or appointed to represent an indigent person who has been convicted of capital murder and who is under a sentence of death in the direct review of the judgment shall be prequalified by the board. Each attorney shall be screened by the board to determine the attorney's qualifications to serve as defense counsel to an indigent person who has been convicted of capital murder and who is under a sentence of death in the direct review of the judgment, pursuant to these regulations and "guideline 5.1(II), attorney eligibility," as published in the 1989 version of the American bar association (ABA) "guidelines for the appointment and performance of counsel in death penalty cases." Each attorney who is eligible to serve on the capital appointments appellate panel shall be certified by the board.

(6) Each attorney assigned or appointed to represent an indigent person who has been convicted of capital murder and who is under a sentence of death in postconviction proceedings shall be prequalified by the board. Each attorney shall be screened by the board to determine the attorney's qualifications to serve as defense counsel to an indigent person who has been convicted of capital murder and who is under a sentence of death in the direct review of the judgment, pursuant to these regulations and "guideline 5.1(III), attorney eligibility," as published in the 1989 version of the American bar association (ABA) "guidelines for the appointment and performance of counsel in death penalty cases." Each attorney who is eligible to serve on the capital appointments postconviction panel shall be certified by the board.

(7) To ensure compliance with these regulations in capital felony or homicide cases, each attorney assigned or appointed to the defense of any indigent person accused of a capital felony or a homicide pursuant to K.S.A. 21-3401, 21-3402, or 21-3403 shall be appointed from panel lists screened pursuant to these regulations and approved by the board.

(b) Except for appointment of an attorney to provide representation for an indigent person accused of a capital felony or a homicide pursuant to K.S.A. 21-3401, 21-3402, or 21-3403, an indigent person who has been convicted of capital murder and who is under a sentence of death in the direct review of the judgment or an indigent person who has been convicted of capital murder and who is under a sentence of death in postcon-

viction proceedings, the judge may waive any of the above conditions if the attorney selected by the judge has sufficient training, resources, and experience to undertake the case in question. (Authorized by and implementing K.S.A. 22-4501, K.S.A. 1997 Supp. 22-4522, K.S.A. 1997 Supp. 22-4505, and K.S.A. 1997 Supp. 22-4506; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended, T-105-6-15-93, June 15, 1993; amended Aug. 16, 1993; amended Nov. 1, 1996; amended Aug. 20, 1999.)

**105-3-3. Rotation of appointments.** All appointments shall be made in an orderly manner to avoid patronage, or the appearance of patronage, and to ensure fair distribution of appointments among all whose names appear on the panel. Names on the panel shall be in alphabetical order and appointments shall be made in sequence with the following exceptions: (a) When the court determines there is a conflict of interest, the next listed attorney shall be appointed.

(b) When the court determines the attorney lacks sufficient experience in a serious felony case, the next qualified attorney shall be appointed.

(c) When the court determines an emergency appointment of counsel is required, the first available attorney may be appointed; or

(d) When the court determines the attorney is unavailable to promptly handle the case, the next listed attorney shall be appointed.

Any attorney who is passed over shall be first in sequence for the next appointment. (Authorized by K.S.A. 1983 Supp. 22-4501 and 22-4522; implementing K.S.A. 1983 Supp. 22-4501 and 22-4522; effective May 1, 1984.)

**105-3-4.** (Authorized by K.S.A. 1983 Supp. 22-4501 and 22-4522; implementing K.S.A. 1983 Supp. 22-4501 and 22-4522; effective May 1, 1984; revoked Aug. 20, 1999.)

**105-3-5. Removal from panel.** (a) An administrative judge may remove any attorney from a panel. The administrative judge shall promptly notify the board of a decision to remove an attorney from any panel.

(b) An attorney may be removed from any panel by the board after it confers with the administrative judge.

(c) The decision to remove shall become effective upon notice to the attorney and shall remain

effective until the board or administrative judge reinstates the attorney to the panel.

(d) An attorney removed from the panel may inform the board that the attorney wishes to appear and offer evidence for reinstatement at a hearing before the board. Any such evidence shall be reviewed by the board to determine whether or not the administrative judge abused the judge's discretion in removing the attorney from the panel. The hearing shall be conducted as a summary proceeding. (Authorized by and implementing K.S.A. 22-4501 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

**105-3-6. Distribution of panels.** The administrative judge of each district shall distribute the list of panel members to judges of the district court, law enforcement officials within the district and the board. The list of panel members shall be distributed annually and as it is revised. (Authorized by K.S.A. 1983 Supp. 22-4501; implementing K.S.A. 1983 Supp. 22-4501; effective May 1, 1984.)

**105-3-7. Appointments prior to court appearance.** (a) When legal representation is requested by a person entitled to counsel under K.S.A. 1982 Supp. 22-4503 and who is detained by law enforcement officials in districts with a public defender, the law enforcement officials shall contact the public defender to provide legal representation, prior to appearance before a court. The public defender shall provide the court with a completed affidavit of indigency from the detainee.

(b) When legal representation is requested by a person entitled to counsel under K.S.A. 1982 Supp. 22-4503 and who is detained by law enforcement officials in districts without a public defender, law enforcement officials shall contact a judge of the district court to appoint a panel attorney to provide legal representation, prior to appearance before a court. Law enforcement officials shall provide a judge of the district court with information from the completed affidavit of indigency. If the judge finds that the detainee is indigent, the judge shall appoint an attorney from the panel. (Authorized by K.S.A. 1983 Supp. 22-4502; implementing K.S.A. 1983 Supp. 22-4501, 22-4503; effective May 1, 1984.)

**105-3-8.** (Authorized by K.S.A. 1984 Supp. 22-4507 and 22-4522; implementing K.S.A. 1984



Supp. 22-4507; effective, T-86-33, Oct. 23, 1985; effective May 1, 1986; revoked Aug. 20, 1999.)

**105-3-9. Duties of trial counsel following sentencing.** (a) In order to protect a convicted defendant's right to appeal, it shall be the duty of each trial counsel to prepare, file, or both, the following documents:

(1) file a motion for modification of sentence pursuant to K.S.A. 21-4603(2), when appropriate;

(2) file a motion for release on appeal bond pursuant to K.S.A. 22-2804, when appropriate;

(3) file a notice of appeal in a timely manner, unless a waiver of the right to appeal has been signed by the defendant;

(4) upon filing the notice of appeal, obtain a court order for the trial transcript, and a transcript of any pretrial or posttrial proceedings from which a claim of error may arise;

(5) upon filing the notice of appeal, obtain an order from the district court appointing the state appellate defender as counsel for the appeal and file the order of appointment with the clerk of the district court within five days of the filing of the notice of appeal;

(6) submit a draft of the docketing statement and all documents necessary to docket the appeal required by supreme court rule 2.041 to the appellate defender within 10 days of the filing of the notice of appeal; and

(7) submit a listing of all hearings in which a record was taken to the appellate defender, including dates, within 10 days of the filing of the notice of appeal.

(b) Requests for compensation for services set forth in subsection (a) shall be included in the claim filed with the board. (Authorized by and implementing K.S.A. 22-4507, as amended by L. 1998, ch. 52, sec. 5, and K.S.A. 1997 Supp. 22-4522; effective, T-86-33, Oct. 23, 1985; effective May 1, 1986; amended May 1, 1987; amended Jan. 11, 1993; amended Aug. 20, 1999.)

**105-3-10. Appointments generally.** Each court appointment funded by the board shall be made in accordance with the rules and regulations adopted by the board for providing legal defense services for indigent persons as prescribed by the board. (Authorized by K.S.A. 1984 Supp. 22-4501, 22-4507 and 22-4522; implementing K.S.A. 1984 Supp. 22-4507 and 22-4522; effective, T-86-33, Oct. 23, 1985; effective May 1, 1986.)

**105-3-11. Conflict cases.** (a) If a conflict of interest will not permit the public defender to represent a defendant, the court shall appoint the designated conflicts office for that county or an assigned attorney who has entered into a contract to represent defendants in conflict cases. If a conflicts office has not been designated for that county, if a contract attorney has not been designated to handle conflicts cases, or if the nature of the conflict requires it, the court shall appoint a qualified attorney from the panel. Each court-appointed attorney in conflict cases shall work independently of the public defender.

(b) Requests for investigative, expert, and other services by court-appointed attorneys shall be made in accordance with K.A.R. 105-7-1. (Authorized by K.S.A. 22-4501 and K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 1997 Supp. 22-4522; effective March 28, 1994; amended Aug. 20, 1999.)

**105-3-12. Appointments in capital cases.** (a) In each case in which the death penalty may be imposed and the defendant is unable to afford counsel, the court shall appoint the capital defender to represent the defendant.

(1) Subject to K.A.R. 105-5-4, the court may appoint co-counsel from the capital appointments panel list to represent the defendant in accordance with the system established by these regulations for providing legal defense services for indigent persons charged with capital felonies. The court, however, shall not appoint any attorney as co-counsel without prior notice to the chief capital defender and the board.

(2) The court shall not appoint any attorney to provide representation in a capital felony without prior notice to the chief capital defender.

(3) Eligibility to serve on the capital appointments panel shall be limited to attorneys who have been screened pursuant to K.A.R. 105-3-2(a)(5).

(b) The court shall appoint counsel for any indigent person accused of homicide pursuant to K.S.A. 21-3401, 21-3402, or 21-3403 from panel lists approved by the board. The court shall not appoint any attorney to provide representation to an indigent person accused of a felony pursuant to K.S.A. 21-3401, 21-3402, or 21-3403 without prior notice to the chief capital defender.

(c) Appeals. The court shall appoint the state appellate defender to represent an indigent defendant in each appeal of a capital felony conviction in accordance with K.A.R. 105-10-2. (Au-

thorized by K.S.A. 22-4501, K.S.A. 1997 Supp. 22-4503, and K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 1997 Supp. 22-4503, K.S.A. 1997 Supp. 22-4505 and K.S.A. 1997 Supp. 22-4522; effective Nov. 1, 1996; amended Aug. 20, 1999.)

#### Article 4.—ENTITLEMENT TO LEGAL REPRESENTATION

##### 105-4-1. Determination of eligibility. (a)

At the commencement of proceedings against any defendant, the defendant may make application for legal representation at state expense by submitting, to the court, an affidavit of indigency on a form provided by the board. The court shall determine if the defendant is indigent, based upon consideration of the following factors, as defined in K.A.R. 105-4-2:

- (1) The defendant's liquid assets;
- (2) the defendant's household income;
- (3) either the defendant's actual, reasonable, and necessary expenses incurred to support the defendant's household or the most current federal poverty guidelines, as published by the U.S. department of health and human services, for the defendant's family unit;
- (4) the anticipated cost of private legal representation; and

(5) any transfer of property by the defendant without adequate monetary consideration after the date of the alleged commission of the offense.

(b) An eligible indigent defendant shall mean a person whose combined household income and liquid assets equal less than either of the following, plus the anticipated cost of private legal representation:

- (1) The sum of the defendant's actual, reasonable, and necessary living expense; or
- (2) the most current federal poverty guidelines, as published by the U.S. department of health and human services, for the defendant's family unit.

(c) The court may also consider any special circumstances affecting the defendant's eligibility for legal representation at state expense.

(d) If the court determines that the defendant is financially able to employ counsel after counsel has been appointed, the court shall require the defendant to reimburse the board in accordance with the provisions of K.S.A. 22-4510, and amendments thereto, for all or part of the expenditures made on the defendant's behalf. (Authorized by K.S.A. 2005 Supp. 22-4504 and K.S.A. 2005 Supp.

22-4522; implementing K.S.A. 2005 Supp. 22-4504 and K.S.A. 22-4510; effective May 1, 1984; amended, T-105-10-3-05, Oct. 3, 2005; amended Feb. 17, 2006.)

**105-4-2. Definition of terms.** Terms used to determine eligibility for indigents' defense services shall have the following meanings: (a) Liquid assets. The defendant's liquid assets shall be defined as cash in hand, stocks and bonds, accounts at financial institutions, real property or homestead having a net value greater than \$50,000, and any other property that can be readily converted to cash, with the following exceptions:

(1) the defendant's car, clothing, and household furnishings; and

(2) any other property, except a homestead having a net value greater than \$50,000, which is exempt from attachment or levy of execution by K.S.A. 60-2301, *et seq.*

The net value of the homestead shall be the fair market value less the mortgage, other encumbrances, and the reasonable cost of sale. The net value of any property transferred after the date of the alleged commission of the offense shall be included in the determination of the defendant's liquid assets.

(b) Household income. The defendant's household income shall be defined as the defendant's income and the income of all other persons related by birth, marriage or adoption who reside with the defendant. Income shall include the total cash receipts before taxes from all resources, including money wages and the net receipts from nonfarm or farm self-employment. Further, income shall include regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, annuities, and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts.

(c) The defendant's reasonable and necessary living expenses. A table shall be calculated by the board which establishes the amounts the board will allow as the defendant's reasonable and necessary expenses incurred to support the defendant and the defendant's household. The table of reasonable and necessary living expenses shall be revised by the board each time the federal poverty guidelines are revised and published in the federal register.

(d) Transfer of property.

(1) If the defendant has transferred property after the alleged commission of the offense, the court shall determine the reason for the transfer of property and whether adequate monetary consideration was received. If adequate monetary consideration was not received, the court shall presume that the transfer was made for the purpose of establishing eligibility unless the defendant furnishes clear and convincing evidence that the transfer was made exclusively for another purpose.

(2) If a transfer was made either for the purpose of establishing eligibility or without adequate monetary consideration, and the property is re-conveyed to the defendant or an adjustment is made by which the defendant receives full value, the defendant shall, if otherwise qualified, be eligible to receive legal representation at state expense. (Authorized by K.S.A. 22-4504 and 22-4522; implementing K.S.A. 22-4504; effective May 1, 1984; amended Nov. 1, 1996.)

**105-4-3. Affidavit of indigency.** A standard format for an affidavit of indigency shall include the following information: (a) the defendant's liquid assets and household income;

(b) the defendant's household expenses;

(c) any extraordinary financial obligations of the defendant;

(d) the size of the defendant's household;

(e) any transfer of property by the defendant after the date of the alleged commission of the offense;

(f) the board's table of reasonable and necessary living expenses; and

(g) the anticipated cost of private legal representation.

If the information provided by the defendant on the affidavit is unclear, incomplete, contradictory, or questionable, further inquiry may be conducted by the board, the court, the county or district attorney, or other officer assigned by the court. The affidavit of indigency forms shall be published and distributed annually to the judicial administrator and to the administrative judge of each district. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4504; effective May 1, 1984; amended May 1, 1985.)

**105-4-4. Finding of indigency.** If the court finds a defendant who is entitled to counsel to be indigent, as defined by statute and these regulations, the court shall appoint counsel to pro-

vide legal representation. A court order authorizing legal representation at state expense shall be made on a form approved by the board. (Authorized by K.S.A. 1983 Supp. 22-4504, 22-4522; implementing K.S.A. 1983 Supp. 22-4503, 22-4504, 22-4505, 22-4506, 22-4512a; effective May 1, 1984.)

**105-4-5. Partial indigency.** (a) The court shall find any defendant to be partially indigent if the defendant is able to pay some part of the cost of legal representation and if the payment or payments does not impose manifest hardship on the defendant or the defendant's household. Any defendant may be found to be partially indigent if the defendant's combined household income and liquid assets are greater than the defendant's reasonable and necessary living expenses but less than the sum of the defendant's reasonable and necessary living expenses plus the anticipated cost of private legal representation.

(b) A defendant found to be partially indigent may be ordered by the court to pay, to the clerk of the district court, a sum not more than the amount expended by the board on behalf of the defendant. (Authorized by K.S.A. 1983 Supp. 22-4504 and 22-4522; implementing K.S.A. 1983 Supp. 22-4504 and 22-4513; effective May 1, 1984; amended May 1, 1985.)

## Article 5.—ATTORNEY COMPENSATION

**105-5-1. General provisions.** Subject to availability of funding, and with the approval of the appropriate judge as provided in K.S.A. 1982 Supp. 22-4507(b), attorneys appointed to represent indigent defendants pursuant to K.S.A. 22-4501, *et seq.*, shall be compensated for time spent in case preparation and presentation in court, at the rate set forth in K.A.R. 105-5-2.

Compensation shall be subject to maximum compensation limitations as set forth in K.A.R. 105-5-6 and K.A.R. 105-5-7. (Authorized by K.S.A. 1983 Supp. 22-4507, 22-4522; implementing K.S.A. 1983 Supp. 22-4507; effective May 1, 1984.)

**105-5-2. Rates of compensation.** (a) Each assigned counsel shall be compensated at the rate of \$80 per hour.

(b) Contract counsel shall be compensated at the rate or rates specified in the contract between the board and the assigned counsel. (Authorized

by and implementing K.S.A. 2005 Supp. 22-4507, as amended by 2006 HB 2129, sec. 1, and 22-4522; effective May 1, 1984; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Oct. 31, 1988; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended March 28, 1994; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006.)

**105-5-3. Appellate courts; compensation.**

(a) For services performed in appealing a case to the court of appeals or the Kansas supreme court, compensation shall be paid at the rate prescribed in K.A.R. 105-5-2.

(b) Compensation for attorneys' services in cases appealed to the Kansas supreme court or the court of appeals shall not exceed \$1,600. However, additional compensation may be approved by the board. (Authorized by and implementing K.S.A. 2005 Supp. 22-4507, as amended by 2006 HB 2129, sec. 1, and 22-4522; effective May 1, 1984; amended May 1, 1985; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006.)

**105-5-4. Multiple attorneys.** No more than one attorney shall be compensated for services rendered at the same stage of proceedings, unless the judge determines that co-counsel is essential to the accused's effective defense. (Authorized by K.S.A. 22-4507 and 22-4522; implementing K.S.A. 22-4507; effective May 1, 1984; amended Nov. 1, 1996.)

**105-5-5. Overpayments.** If it is determined by the director that an attorney has been paid an amount in excess of what is allowable according to the current regulations regarding compensation, the director shall notify the attorney to immediately reimburse the board for a like amount. If not paid on demand, the director may recoup that amount from a subsequently approved claim from that attorney. (Authorized by K.S.A. 1983 Supp. 22-4507, 22-4522; implementing K.S.A. 1983 Supp. 22-4507; effective May 1, 1984.)

**105-5-6. Reasonable compensation; non-tried cases.** (a) Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants and other indigent persons at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-

5-8, reasonable compensation shall not exceed \$1,600 in the following cases:

(1) Those felony cases in the trial court that are classified as non-drug offenses of severity levels 1 through 5 that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable; and

(2) those felony cases in the trial court that are classified as drug offenses, that have not been submitted to a judge or jury, and in which there have been six hours or more spent in court in defense of the indigent defendant, including services at a preliminary hearing and sentencing, if applicable.

(b) Except as provided in K.A.R. 105-5-8 and K.A.R. 105-5-6(a), reasonable compensation shall not exceed \$1,200 in the following cases:

(1) Those felony cases in the trial court that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable, and are classified as severity levels 6 through 10 non-drug offenses; and

(2) those felony cases in the trial court that are not submitted to a judge or jury, that are classified as drug offenses, and in which there have been fewer than six hours spent in court in defense of the indigent defendant, including services at a preliminary hearing and sentencing, if applicable.

(c) Except as provided in K.A.R. 105-5-8, K.A.R. 105-5-6(a), and K.A.R. 105-5-6(b), reasonable compensation shall not exceed \$800 in the following types of cases:

(1) Habeas corpus cases as authorized by K.S.A. 22-4503 and K.S.A. 22-4506 and amendments thereto;

(2) cases filed pursuant to K.S.A. 60-1507 and K.S.A. 22-4506 and amendments thereto;

(3) habeas corpus cases as authorized by K.S.A. 22-2710 and amendments thereto;

(4) habeas corpus cases as authorized by K.S.A. 22-3428 and K.S.A. 22-3428a and amendments thereto; and

(5) habeas corpus cases as authorized by K.S.A. 59-2965 and amendments thereto.

(d) Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed \$320 in the following types of cases:

(1) Representation of grand jury witnesses determined to be indigent and called to testify pursuant to K.S.A. 22-3009 and amendments thereto;

(2) representation of indigent persons com-



mitted to custody as material witnesses pursuant to K.S.A. 22-2805 and amendments thereto;

(3) probation revocation hearings; and

(4) motions to modify sentence pursuant to K.S.A. 21-4603 and amendments thereto. (Authorized by and implementing K.S.A. 2005 Supp. 22-4507, as amended by 2006 HB 2129, sec. 1, and 22-4522; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006.)

**105-5-7. Reasonable compensation; tried cases.** Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation for felony cases tried on pleas of not guilty and submitted to a judge or jury for adjudication, including compensation for services at the preliminary hearing, sentencing, and motions to modify the sentence, shall not exceed the following:

(a) \$2,400 for felonies classified as non-drug offenses of severity levels 5 through 10;

(b) \$3,200 for felonies classified as non-drug offenses of severity level 4 and felonies classified as drug offenses of severity levels 2 through 4; and

(c) \$8,000 for felonies classified as non-drug offenses of severity levels 1 through 3, off-grid felonies, and felonies classified as drug offenses of severity level 1. (Authorized by and implementing K.S.A. 2005 Supp. 22-4507, as amended by 2006 HB 2129, sec. 1, and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006.)

**105-5-8. Compensation; exceptional cases.**

(a) Any compensation for attorneys' services in excess of the amounts set out in K.A.R. 105-5-6 and K.A.R. 105-5-7 may be approved only in exceptional cases. A finding by the court that a case is exceptional shall be subject to final approval by the board. An exceptional case shall mean any of the following:

(1) Any case involving a felony charge in the

trial court that does not appear on the sentencing range grid;

(2) any felony case tried on a not guilty plea in which there have been 25 or more hours spent in court in defense of the indigent defendant;

(3) any felony case not submitted to a judge or jury in which there have been 10 hours or more of in-court time spent in defense of the indigent defendant;

(4) any case that has been declared an exceptional case by the court due to its complexity or other significant characteristics.

(b) Each claim for compensation in an exceptional case shall be accompanied by a specific finding in a court order setting forth the basis for the declaration that the case is exceptional.

(c) Reasonable compensation for attorneys' services in exceptional cases shall not exceed \$8,000 per case. However, additional compensation may be approved by the board if warranted by the extreme complexity of the case. (Authorized by and implementing K.S.A. 2005 Supp. 22-4507, as amended by 2006 HB 2129, sec. 1, and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006.)

**105-5-9. Factors in determining compensation in exceptional cases.** The following factors shall be considered by the board in its determination of reasonable compensation in exceptional cases:

(a) the amount and the type of services rendered;

(b) the amount of time expended on the case;

(c) the character and importance of the litigation;

(d) the amount of money or value of the property affected;

(e) the legal skills and experience required for the particular case;

(f) the ratio of out-of-court preparation time to in-court time;

(g) the reasonableness of client contact; and

(h) the proximity of the client to attorney defense services. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective Aug. 16, 1993.)

### Article 6.—REIMBURSEMENT OF EXPENSES

**105-6-1. Reimbursement generally.** Appointed attorneys shall be reimbursed for expenses reasonably incurred in performance of duties when approved by the appropriate judge as provided in K.S.A. 1982 Supp. 22-4507(b). Expense reimbursements shall not be considered within the maximum amounts of compensation set out in K.A.R. 105-5-6 and K.A.R. 105-5-7. (Authorized by K.S.A. 1983 Supp. 22-4507, 22-4522; implementing K.S.A. 1983 Supp. 22-4507, 22-4522; effective May 1, 1984.)

**105-6-2. Expenses allowed.** Expense reimbursements shall include reimbursement for the following expenses:

- (a) the cost of photocopying prepared briefs;
- (b) the cost of binding appellate briefs for each case;
- (c) in-state travel and subsistence by appointed attorneys, not to exceed the rate set by the secretary of the department of administration for state employees in accordance with K.S.A. 75-3201, et seq. and K.S.A. 75-4601, et seq.;
- (d) expenses incurred by appointed attorneys in obtaining computerized legal research if the case presents a unique question of law to be researched. Such expenses shall not exceed \$200;
- (e) expenses incurred by appointed attorneys in taking depositions, if found to be authorized by statute and necessary in order to provide an adequate defense and when prior approval has been obtained from the court;
- (f) costs of mailing briefs; and
- (g) expenses incurred by appointed attorneys which would otherwise have been approved and paid by the board directly to a third party in accordance with statute or rule and regulation. (Authorized by and implementing K.S.A. 22-4507, as amended by L. 1998, ch. 52, sec. 5, and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

### Article 7.—INVESTIGATIVE, EXPERT OR OTHER SERVICES

**105-7-1. Order authorizing services.** Each court order authorizing investigative, expert or other services for an indigent defendant shall be made on a form approved by the board and shall include an estimate of the cost of those services. A copy of this order shall be sent to the board

promptly, after being signed by the judge. (Authorized by K.S.A. 1983 Supp. 22-4507, 22-4512a and 22-4522; implementing K.S.A. 1983 Supp. 22-4507, 22-4508, 22-4512a; effective May 1, 1984.)

**105-7-2. Claims.** (a) Claims for compensation for investigative, expert, or other services provided to an indigent defendant shall be made on a form approved by the board. The claims shall be signed by the payee and the judge before transmittal to the board. Claims for investigative, expert, or other services shall include a time sheet detailing time expended in the performance of these services and any compensation received for the same services from any other source.

(b) Exceptions. Claims for expert services rendered at the request of a public defender office shall be excluded from the provisions of K.A.R. 105-7-1 et seq. (Authorized by K.S.A. 22-4512a and K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 22-4508 and K.S.A. 22-4512a; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Aug. 20, 1999.)

**105-7-3. Limitations.** (a) Each claim for compensation shall be for investigative, expert or other services performed on or after the date of the order authorizing the services unless the judge finds that timely procurement of necessary services could not await prior authorization.

(b) Each claim shall not exceed the estimated cost set forth on the order authorizing the services. (Authorized by K.S.A. 1983 Supp. 22-4507, 22-4522; implementing K.S.A. 1983 Supp. 22-4507, 22-4508, 22-4522; effective May 1, 1984.)

**105-7-4. Investigators.** Each individual performing services as an investigator shall be compensated at a rate not to exceed \$20 per hour, unless a higher rate has been approved in advance by the director. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 22-4508 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

**105-7-5. Psychiatric or psychological services.** Each individual performing psychiatric or psychological services shall be compensated at a rate approved in advance by the director. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 22-4508 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Oct. 30, 1989; amended Aug. 20, 1999.)

**105-7-6. Interpreters.** Each individual

performing services as an interpreter for the defense shall be compensated at a rate not to exceed \$15 per hour, unless a higher rate has been approved in advance by the director. No more than one interpreter per defendant may be compensated for services performed at the same stage of the proceeding. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 22-4508 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended May 1, 1987; amended Aug. 20, 1999.)

**105-7-7. Other services.** Each individual performing other allowable defense services shall be compensated at a rate approved in advance by the director. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 22-4508 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

**105-7-8. Maximum compensation.** Any claim in excess of \$300, in any one case, for investigative, expert, or other services and any claim in excess of \$1,000 for psychiatric or psychological services shall require approval of the director. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 22-4508 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended May 1, 1988; amended Aug. 20, 1999.)

**105-7-9. Services not compensable.** The following services shall not be compensable unless approved by the director: (a) polygraph examinations;

- (b) psychological stress evaluation exams;
- (c) psychiatric or other services arising out of proceedings to determine competency to stand trial;
- (d) other expert tests unless the results are admissible as evidence; and
- (e) any other expert services not necessary for an adequate defense of the case. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 1997 Supp. 22-4508 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

#### Article 8.—COURT REPORTERS; TRANSCRIPTS

**105-8-1. Generally.** (a) When an attorney appointed to represent an indigent defendant at trial determines that a transcript or partial transcript of the trial will be necessary to prosecute an appeal, the attorney shall request a court order for the transcript. Attorneys shall order complete

transcripts only when absolutely necessary for the appeal, in accordance with supreme court rules.

(b) Each court order for a transcript shall be made on a form approved by the board. A copy of the order shall be mailed to the board promptly. The order shall specify whether a full or partial transcript is to be prepared. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 1997 Supp. 22-4505, K.S.A. 22-4509 and K.S.A. 22-4512a; effective May 1, 1984; amended May 1, 1986; amended Aug. 20, 1999.)

**105-8-2. Claims.** Each claim for transcript fees shall be made on a form approved by the board. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 22-4512a; effective May 1, 1984; amended Aug. 20, 1999.)

**105-8-3. Compensation.** (a) Court reporters shall receive compensation for one original transcript in a single-defendant case appealed to the appellate courts. In multi-defendant cases appealed to the appellate courts, court reporters shall be compensated for one original transcript and one transcript copy for each additional co-defendant.

(b) Compensation shall be at the rate set for transcripts pursuant to the rules of the supreme court relating to official court reports. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 1997 Supp. 22-4522, K.S.A. 1997 Supp. 22-4505, K.S.A. 22-4507, as amended by L. 1998, ch. 52, sec. 5, and K.S.A. 22-4509; effective May 1, 1984; amended Aug. 20, 1999.)

**105-8-4. Claims not allowed.** Claims by court reporters for transcripts of pleas of guilty or nolo contendere, preliminary hearings, voir dire proceedings, opening statements or closing statements shall not be compensated except when the defendant alleges that it is necessary to enable the person to present the appeal adequately. (Authorized by K.S.A. 22-4507; implementing K.S.A. 22-4509; effective May 1, 1984; amended Oct. 30, 1989.)

#### Article 9.—CLAIMS GENERALLY

**105-9-1. General provisions.** (a) All claims for payment for legal representation provided to an indigent defendant by attorneys, court reporters, investigators and all others shall be submitted to the board for payment not later than 60 days after the termination of services.

(b) Unless otherwise specified, all claims that

comply with these rules and regulations shall be processed for payment by the director.

(c) Claims not conforming with rules and regulations prescribed by the board may be denied payment. (Authorized by K.S.A. 1983 Supp. 22-4507, 22-4522; implementing K.S.A. 1983 Supp. 22-4507, 22-4522; effective May 1, 1984.)

**105-9-2. Approval of claims.** (a) Each claimant shall complete and sign the necessary claim forms and submit them to the court for approval.

(b) The judge shall examine each claim and determine if it is reasonable and in accordance with rules and regulations adopted by the board. In determining the reasonableness, the judge shall consider the nature and complexity of the factual and legal issues involved and the time reasonably necessary to prepare and present the case.

(c) The judge may reduce the amount of any claim submitted for approval. (Authorized by K.S.A. 1983 Supp. 22-4507, 22-4522; implementing K.S.A. 1983 Supp. 22-4507, 22-4522; effective May 1, 1984.)

**105-9-3. Claims from attorneys.** Each claim from an attorney for compensation and reimbursement of allowable expenses shall be filed with the board on a voucher form approved by the board. Each claim shall be accompanied by a timesheet, in a form approved by the board, detailing:

- (a) the date of each compensable activity;
- (b) the purpose of the activity performed;
- (c) the type of activity performed;
- (d) the amount of time, in tenths of hours, spent on each activity; and
- (e) the amount of compensation received for the same services from any other source. (Authorized by K.S.A. 1983 Supp. 22-4507, 22-4522; implementing K.S.A. 1983 Supp. 22-44507, 22-4522; effective May 1, 1984.)

**105-9-4.** (Authorized by K.S.A. 1987 Supp. 22-4507 and 22-4522; implementing K.S.A. 1987 Supp. 22-4507 and 22-4522; effective May 1, 1984; revoked, T-105-6-13-88, June 13, 1988; revoked Oct. 31, 1988.)

**105-9-5. Proration.** (a) The payment of attorney claims may be prorated by the board if the board determines that funding in any fiscal year is insufficient to pay all claims in full.

(b) Prior to a decision by the board to prorate claims pursuant to K.S.A. 22-4507 (c) and K.A.R.

105-9-5 (a), a public hearing shall be conducted by the board to determine the impact such a decision would have on the quality of representation afforded to indigent defendants and the availability of sufficient numbers of attorneys on the county and district panels.

(c) A decision by the board to prorate claims may consist of an equitable reduction in the hourly rate of compensation on all pending and anticipated claims. The reduced hourly rate of compensation shall be set at an amount that will enable the agency to process the reduced hourly rate on all pending and anticipated claims for the remainder of the fiscal year in which the claims are submitted for payment.

(d) Upon a decision to prorate claims but not sooner than 30 days prior to the effective date of the proration plan, the following information shall be published by the board in the Kansas Register:

- (1) the beginning and ending dates of the period in which proration will be implemented;
- (2) the revised hourly rate of compensation to be paid to appointed attorneys; and
- (3) the anticipated savings from the board's proration plan. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective Aug. 16, 1993.)

#### **Article 10.—SYSTEMS FOR PROVIDING LEGAL DEFENSE SERVICES FOR INDIGENT PERSONS**

**105-10-1.** (Authorized by K.S.A. 22-4501 and 22-4522; implementing K.S.A. 22-4503 and 22-4522; effective, T-86-33, Oct. 23, 1985; effective May 1, 1986; amended Nov. 1, 1988; amended, T-105-6-22-89, June 22, 1989; amended Oct. 30, 1989; revoked March 28, 1994.)

**105-10-1a. Public defender systems at the trial level.** (a) Except as provided in K.A.R. 105-3-11, each public defender office shall provide all indigent felony and related defense services at the trial level.

(b) If the director has provided notice pursuant to K.A.R. 105-10-3, to the administrative judge of the judicial district in which a case is filed, of the board's designation of a conflicts attorney office for a county, the designated conflicts attorney office shall be appointed and shall provide indigent felony and related defense services at the trial level for those cases that cannot be handled by the public defender office due to potential conflicts of interest, with the exception of those cases that the



designated conflicts attorney office cannot handle due to a potential conflict of interest.

(c) Each trial court shall appoint the public defender to provide felony defense services in all felony and other cases set forth in K.A.R. 105-1-1(a), with the following exceptions:

(1) if the director has not designated a public defender office to provide defense services in the county;

(2) if the director has designated a public defender office to provide defense services in only selected felony severity levels;

(3) if K.A.R. 105-10-2 requires the appointment of the state appellate defender;

(4) if a conflict of interest will not permit the public defender to represent the defendant and the conflicts attorney office or contract attorney designated to handle conflicts cases is not available; or

(5) if the public defender office withdraws from the case or declines the case as provided in K.A.R. 105-21-3.

(d) If one of the exceptions stated above prevents the appointment of the public defender, the court shall appoint an attorney as provided in K.A.R. 105-3-11 on a form approved by the board. (Authorized by and implementing K.S.A. 1997 Supp. 22-4522; effective March 28, 1994; amended Aug. 20, 1999.)

**105-10-2. Public defender system for appeals.** (a) The state appellate defender office shall provide defense services in the appellate courts of Kansas for all indigent appeals taken from cases described in subsection (b) in all district courts of Kansas.

(b) The court shall appoint the state appellate defender to provide appellate representation to persons determined to be indigent in the following cases:

(1) all felony appeals;

(2) appeals from the denial of a motion pursuant to K.S.A. 60-1507;

(3) appeals from the denial of a petition for a writ of habeas corpus pursuant to K.S.A. 22-2710; and

(4) appeals pursuant to K.S.A. 1985 Supp. 38-1681(a).

(c) The state appellate defender office may represent a defendant in an appeal on a question reserved by the prosecution pursuant to K.S.A. 22-3602(b)(3), as amended by L. 1986, Ch. 115. (Authorized by K.S.A. 1985 Supp. 22-4501 and

22-4522; implementing K.S.A. 1985 Supp. 22-4505, 22-4506 and 38-1681; effective, T-86-33, Oct. 23, 1985; effective May 1, 1986; amended May 1, 1987.)

**105-10-3. Implementation schedule for public defender system.** (a) The district court judge shall appoint the public defender, or any other attorney under the system established by the board, to represent all persons entitled to counsel under K.S.A. 22-4501, *et seq.* who have not, before the system implementation date, had counsel appointed in the action pending before the court. The system implementation date in a particular county shall be the date provided in written notice by the director to the following persons:

(1) the judicial administrator for the Kansas unified judicial branch; and

(2) the district court administrative judge.

(b) The district court judge shall appoint the public defender, or any other attorney under the system established by the board, to represent any persons entitled to counsel under K.S.A. 22-4501, *et seq.* who have, before the system implementation date, had counsel appointed in the action pending before the court if appointed private counsel withdraws or is removed from the case after the implementation date.

(c) The district court judge shall appoint the public defender to cases with matters pending before notice of the change in the indigents' defense system if the public defender requests the appointment and appointed private counsel does not object.

(d) The district court judge may appoint the public defender to cases with matters pending before notice of the change in the indigents' defense system if it is the judgement of the court that it is in the best interests of the defendant to do so and if the public defender consents to the appointment.

(e) Until notice is given pursuant to the provisions of this regulation that a county shall be served by a public defender office, the district court judge has discretion to appoint counsel under the previously existing system for the county or district. (Authorized by and implementing K.S.A. 1997 Supp. 22-4522; effective March 28, 1994; amended Aug. 20, 1999.)

**105-10-4. Notification of designation of conflicts office.** (a) The director shall provide notice of the board's designation of a conflicts office

to the administrative judge of the judicial district by certified letter, return receipt requested, at least 30 calendar days prior to the time the designation becomes effective. The notice shall include:

- (1) the county for which such office is designated as the conflicts office;
- (2) the effective date of the designation; and
- (3) the name, address and phone number of the designated conflicts office.

(b) If the written notice of designation of a conflicts office is received at a date less than 30 calendar days prior to the effective date of designation contained in the notice, the effective date of designation will be 30 calendar days after the actual receipt of the written notice of the designation.

(c) If the board changes the designated conflicts office for a particular county, the board shall provide written notice to the administrative judge of the judicial district 10 calendar days prior to the effective date of the change, by certified letter, return receipt requested. The notice shall state:

- (1) the effective date of the change;
- (2) the name, address and phone number of the new conflicts office; and
- (3) the manner in which current open cases are to be handled. (Authorized by K.S.A. 22-4501 and 22-4522; implementing K.S.A. 22-4503 and 22-4522; effective March 28, 1994.)

**105-10-5. Assigned counsel contracts.** A public defender, the state appellate defender, and the designated conflicts office may, upon written authorization by the director, contract for services with qualified attorneys to undertake representation of indigent defendants to which each office has been appointed. (Authorized by and implementing K.S.A. 1997 Supp. 22-4522; effective March 28, 1994; amended Aug. 20, 1999.)

#### **Article 11.—REIMBURSEMENT FROM DEFENDANT**

**105-11-1. Defendant reimbursement of attorney fees.** The document titled “attorney cost reimbursement tables: assigned counsel and public defender,” as revised by the state board of indigents’ defense services on June 20, 2008, is hereby adopted by reference. (Authorized by K.S.A. 22-4504; implementing K.S.A. 22-4522 (e); effective, T-105-10-3-05, Oct. 3, 2005; effective Feb. 17, 2006; amended, T-105-7-5-06, July 5,

2006; amended Nov. 13, 2006; amended, T-105-7-26-07, July 26, 2007; amended Nov. 26, 2007; amended, T-105-8-12-08, Aug. 12, 2008; amended Dec. 29, 2008.)

#### **Article 12 to 20.—RESERVED**

#### **Article 21.—PUBLIC DEFENDER GUIDELINES**

**105-21-1. Qualifications.** Each public defender shall be an attorney licensed to practice law in Kansas and shall be selected on the basis of merit. Primary qualifications shall be: (a) demonstrated commitment to the provision of quality legal representation for eligible persons charged with or convicted of criminal conduct;

(b) demonstrated ability to properly administer a law office of similar size and responsibility to that of the public defender office; and

(c) demonstrated knowledge of criminal law and effective ability to provide actual representation. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522; effective May 1, 1984.)

**105-21-2. Scope of representation.** Except as otherwise provided by law or by ethical considerations, each public defender shall accept and undertake representation of all persons assigned to that office and determined to be eligible for the services of the public defender in accordance with K.S.A. 1982 Supp. 22-4501, *et seq.* (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522; effective May 1, 1984.)

**105-21-3. Withdrawing from cases.** (a) Any public defender may withdraw from any court-appointed case when that defender determines that there exists a possible conflict of interest in further representation of the defendant.

(b) The public defender may refuse to accept court-appointed cases when it is determined jointly by the public defender and the director that the current active caseload would preclude the public defender from providing adequate representation to new clients.

(c) When a decision is made to withdraw from a case or to not accept cases due to current case-loads, the public defender shall communicate this decision to the administrative judge of the district, who shall appoint attorneys, in sequence, from the panel for a period established by the director. (Au-

thorized by and implementing K.S.A. 22-4501 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

**105-21-4. Misdemeanor or juvenile appointments.** Any public defender, with the approval of the director, may elect to accept misdemeanor or juvenile appointments not covered by agreement or contract in the district or county of jurisdiction. However, the public defender shall make a record of time expended both in court and in preparation of such a case and shall submit this timesheet with a bill for services rendered to be computed at the rate set out in K.A.R. 105-5-2. The timesheet and bill shall be submitted to the clerk of district court of the county in which the case was heard. A copy of this billing and timesheet shall be sent promptly to the director. The bill shall designate the state board of indigents' defense services as the payee and shall include the title of the case, case number and any other identifying information needed by the clerk for processing, as well as the total amount due according to the timesheet. Expenses incurred by the public defender office may also be included in this billing.

The public defender may, at any time, refuse to accept misdemeanor or juvenile appointments. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522; effective May 1, 1984.)

**105-21-5.** (Authorized by K.S.A. 1982 Supp. 22-4507 and 22-4522; implementing K.S.A. 1982 Supp. 22-4508 and 22-4522; effective May 1, 1984; revoked May 1, 1985.)

**105-21-6. Records and reports.** Each public defender shall keep accurate records of cases assigned and make reports in the form and with the content prescribed by the director. (Authorized by and implementing K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended Aug. 20, 1999.)

**Articles 22 to 30.—RESERVED**

**Article 31.—CONTRACT COUNSEL GUIDELINES**

**105-31-1. General provisions.** (a) The board may elect to contract with one or more private attorneys for the delivery of indigent defense

services in any county, counties, or district when there is evidence that such contracting may be cost effective or that the assigned counsel panel lacks attorneys of sufficient expertise or number.

(b) The duration of the contract shall be set forth in the contract and shall be subject to availability of funds. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522, 22-4523; effective May 1, 1984.)

**105-31-2. Awarding the contract.** (a) The board shall not pursue a contract through the competitive bidding process but only through negotiation.

(b) Contracts to individual attorneys or firms shall be awarded on the basis of:

(1) the experience and qualifications of the attorney or firm;

(2) the willingness and ability of the attorney or firm to comply with the performance criteria and statistical reporting provisions of the contract; and

(3) the negotiated rate of compensation. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522, 22-4523; effective May 1, 1984.)

**105-31-3. Qualifications.** Each attorney qualified to serve on the panel shall be qualified to enter into a contract for the purpose of providing legal representation to indigents. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522, 22-4523; effective May 1, 1984.)

**105-31-4.** (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4505, 22-4522; effective May 1, 1984; revoked Aug. 20, 1999.)

**105-31-5. Exceptional cases.** Subject to board approval, any contract attorney may be provided compensation in addition to the contract compensation for cases determined to be exceptional in nature as defined by K.A.R. 105-5-8. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4522; effective May 1, 1984.)

**105-31-6. Other provisions.** The procedure for withdrawing from cases and procuring investigative, expert or other services shall be set forth in the contract. (Authorized by K.S.A. 1983 Supp. 22-4522; implementing K.S.A. 1983 Supp. 22-4508, 22-4522; effective May 1, 1984.)